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ABSTRACT

Regardless of one's philosophical views of the role of the national government, the new federal willingness to reexamine its past effectiveness and role provides an opportunity for grassroots involvement by both state educational agencies and local school districts. An evaluation of current federal enactments needs to consider several important areas, among them: appropriate federal, state, and local roles and responsibilities are needed to carry out federal programs; the effectiveness of formulas that flow funds into the state on state equalization programs must accommodate tests inherent in the Serrano v. Priest constitutional concerns for state fiscal systems; a resolution is needed for the different treatments and definitions in the several laws in respect to areas such as handicapped, maintenance of effort, nonsupplementation, and so forth; funds need to flow to the states on multiyear, long-range state plans rather than on annual time frames that place a premium on repetitive processes requiring planning, programming, evaluating, and reporting; the merits of national uniformity in treatment for categorical groups versus desirability of state flexibility in treatment need to be examined; and the relationship of state programs that are similar to federal programs must be more clearly delineated. (Author/IRT)

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THE TIME IS RIPE FOR A REEXAMINATION OF FEDERAL EDUCATIONAL POLICY

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High priority social and economic national interests and the need for responsive change by local educational agencies have brought about dramatic increases in federal legislation and regulations since 1960. An examination of laws passed during this period seems to indicate that the Congress of the United States has become impatient with state and local response to its mandates and has become increasingly prescriptive in order to achieve its goals and objectives. Reenactment of many of these laws has increased their complexity and scope, often without increased fiscal resources and time frames to carry them out effectively. Planning, monitoring, evaluation, and reporting activities in federal program administration are elements which consume vast amounts of time and resources. Another significant by-product of the renewed federal educational interest is the need for school districts and state educational agencies to use their own dollars and manpower to pursue federal mandates and priorities, actions which often preempt urgent local needs and priorities.

The new federal administration in Washington, D.C. has called for a reappraisal of federal-state-local educational roles and programs to carry out national programs. They emphasize that if the present state of the art is to change, states must demonstrate and assure the Congress that they are willing and capable of carrying out the federal interest effectively. Thus, the current period may be viewed as an invitation to evaluate the federal role in public education under current federal and state constitutional constraints.

The time may be even more expeditious since Congress recently recognized the prescriptive, preemptive characteristics of its own legislation. In 1970, it enacted a law against federal control of education which prohibits the federal government from exercising any "direction, supervision or control over the curriculum, program or instruction, administration or personnel of any educational institution, school, or school system." This could be construed as a reaffirmation of the Tenth Amendment to the U.S. Constitution which states that "The powers not

delegated to the United States by the Constitution, not prohibited by it to the States, are reserved to the States respectively, or to the people."

The counter to such arguments that education is a state and local matter holds that the Congress does have the authority to legislate programs pursuant to the spending power conferred upon it by Article I, Section 8, of the Constitution as well as the equal protection provisions of the Fourteenth Amendment. Federal programs have carried with them the assumption that states and localities were not required to accept federal assistance or federal funds, but by voluntarily entering into a contractual relationship, they accepted conditions upon which the assistance was offered them. This position is illustrated by the courts in decisions similar to *New Jersey School Board v. Supreme Court of the State of New Jersey* which found that participation in federal programs was voluntary by local municipalities in New Jersey. Recent federal laws have gone beyond the voluntary nature of federal assistance suggested in the New Jersey case. For example, Public Law 94-142 (Education for All Handicapped Children Act of 1975) requires the states and local school districts to "assure that all handicapped children have available to them . . . a free, appropriate public education." It is generally conceded that this legislation does not allow a state any choice to decline the opportunity to provide for the full and appropriate education of handicapped children. States and local school districts are subject to those provisions whether or not they receive federal funds. There is no free, contractual choice in the matter.

Recently, Supreme Court decisions have held that a state's authority for public education is paramount and also among the powers the U.S. Constitution has reserved to the states. This follows on the opinion in *Brown v. Board of Education* (1954) when the Supreme Court stated that "education is perhaps the most important function of state and local governments." Among these recent interpretations, the Court, *Wisconsin v. Yoder* (1972), recognized that "providing public schools ranks at the very apex of the function of a state," and *National League of Cities v. Usery* (1976) found the Court emphasizing that it had "repeatedly recognized that there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner." Although not specifically applicable to the matter of public education, the Court warned that "If Congress may withdraw from the States the authority to make those . . . decisions upon which . . . (public service) functions must rest, we think there would be little left of the States' 'separate and independent existence.'"

States are becoming militant in asserting their sovereign prerogatives and control over the use of federal funds within their borders. Some require the reappropriation of such funds by the legislature. In Pennsylvania, this legislative power to control the use of federal funds is being tested in the case of *Shapp v. Sloan and the General Assembly of Pennsylvania*. Governor Shapp holds that the control of federal funds rests with the executive branch, and the General Assembly successfully challenged it in the Commonwealth Court, which held that such power is vested in the legislature.

In public positions, both President Carter and members of the Congress have stated that the effectiveness of existing laws will be evaluated before the programs are reauthorized. This seems to signal an intention to allocate resources only for programs of proven effectiveness. A notice in the *Federal Register* of March 11, 1977, which directs the Office of Management and Budget to make a comprehensive "zero base review" of advisory committees, may be the forerunner of other things to come. Office of Management and Budget officials point out that only national boards and committees which have a compelling need for existence will survive. It appears the evaluation procedures and findings will be made in full public view and will use cost-effective and/or zero base budgeting methods. Any future evaluation of administrative effectiveness will probably indicate how well states and school districts have planned, monitored, evaluated, audited, researched, and reported on their stewardship of federal programs.

Regardless of one's philosophical view of the role of the national government, the new federal willingness to reexamine past effectiveness and roles provides an opportunity for grass-roots involvement by both state educational agencies and local school districts. In the past, many of the state and local school district prescriptions for the administration of existing federal laws came about as a result of unawareness by the Congress and legislative staff members of realities at the state and local levels. States and local school districts need to make their convictions and capabilities known to federal officials if changes are to be made in present practices.

An evaluation of current federal enactments needs to consider several important areas, among them:

1. *Appropriate federal, state, and local roles and responsibilities are needed to carry out federal programs.* In recent years, strong objections to the prescriptive intervention of the federal role have surfaced in the states. Any change will require a reexamination of the

nature of the interest, leadership, and required assurances from states to the federal government as well as clarification of state and local school district roles in the administration of federal programs. State and local officials need to convince the federal partner that the present imposed burdens in federal laws and regulations are disproportionate to the 7 percent average national fiscal investment in state and local public educational costs.

2. *The effectiveness of formulas which flow funds into the state on state equalization programs must accommodate tests inherent in the Serrano v. Priest constitutional concerns for state fiscal systems.* The requirements and impact of nonsupplementation, comparability, and allocation formulas need to be examined in the light of holdings by the courts which mandate school district fiscal equality to provide basic educational programs and services to students. It seems illogical to require one level of government to equalize fiscal capacity while at the same time permitting another level of government to disequalize it. It seems reasonable to assume that constitutional factors override legislative mandates.

3. *Federal assistance needs to be provided to states under categorical, broad purpose, or general aid type grants.* The selective intervention strategies used by the federal government have largely used categorical programs as the vehicles to achieve its goals. The increased number and complexity of existing programs makes some kind of program consolidation to similar targeted population groups desirable, assuming it would also be accompanied by simplification, a decrease in paperwork, and decreased bureaucracy. Recent consolidations of federal programs, such as Title IV, Public Law 93-380, have not achieved desired goals of simplification, paperwork reduction, and increased flexibility desired by the states. However, before further programs are undertaken, the issues of categorical, broadly based grants, or general aid need to be reexamined and guides established for the appropriate use of each of these methods.

4. *A resolution is needed for the different treatments and definitions in the several laws in respect to areas such as handicapped, maintenance of effort, nonsupplementation, etc.* Different definitions and treatments in federal enactments sometimes cause administrative and program conflicts. At least two basic steps could be taken to resolve such problems. The first is to consolidate all earmarks into one authorization, and the second is to transfer funds from one program to another in order to administer them uniformly. In the latter case, earmarks could be retained in each act, but the transfer

of funds into the basic enactment would provide for a single administration of programs and services. These and other potential actions should be examined and some steps taken to eliminate inappropriate or conflicting provisions.

5. *Funds need to flow to the states on multiple-year, long-range state plans rather than annual time frames which place a premium on repetitive processes requiring planning, programming, evaluating, and reporting.* The special needs or deficiencies of individuals and groups can seldom be ameliorated in short time frames. Repetitive annual program plans frequently become reiterative paper tigers which needlessly consume resources and delay attainment of goals and objectives. Multiple-year applications and plans would simplify the administration of programs, increase resources available for programs, and promote continuity in planning and programming for the long-range rather than short-range time frames.

6. *The merits of national uniformity in treatment for categorical groups versus a desirability of state flexibility in treatment need to be examined.* It appears the minimum standards are written into laws to secure adequate compliance by the poorest performing state. Such prescriptions reduce the flexibility of most states long after minimum compliance by them has been assured. Future legislative changes should include provisions similar to those in Public Law 94-142 for nonsupplementation and 100 percent service, which allow states to disregard such minimum standards after performance or compliance has been assured.

7. *The relationship and kinds of services provided to children enrolled in nonpublic schools is in need of clarification.* Benefits to children in nonpublic schools are provided under different criteria in different federal laws. There is a need to make basic provisions uniform across programs and objectify the language relating to services and benefits. For example, "comparability" must have standards or characteristics on which it can be judged. Another area that needs clarification is whether federal laws and practice under the federal Constitution preempt state constitutional and legislative provisions.

8. *The relationship of state programs that are similar to federal programs must be more clearly delineated.* A number of states also provide programs for populations which are the target of federal programs. When both federal and state programs for the same population are provided to local school districts, questions about factors such as comparability, supplementation, required provisions

for general services to target populations, and the eligibility of populations served by state programs for federal participation and funding are often an issue. As a result, these conflicts work to the disadvantage of the population for which special programs are provided. It is essential that such conflicts and issues be resolved so that groups needing special programs or treatments are not penalized because bureaucratic preconditions must be assured.

Conclusion

There is little question that important educational interests will require the participation of the federal government to meet critical needs which cannot be fully met by state and local governments alone. An interdependent society is best served by a federal interest which as a last resort assures citizens of access to basic educational opportunities. The insistence by the federal government for minimum compliance by the states in its programs and financing must not be so inflexible that states and local school districts are handicapped in meeting their own unique and independent needs.

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